* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 820 of 2006**

% Judgment reserved on: 29th January , 2007

Judgment delivered on: 14th February, 2007

M/S RELLA RAM SANT RAM
110, AVTAR ENCLAVE
PASCHIM VIHAR,
NEW DELHI .....Appellant
Through:Mr.Satyen Sethi, Adv.

versus

COMMISISONER OF INCOME TAX
DELHI (CENTRAL)-II
E-2, ARA CENTRE, JHANDEWALAN EXTN.
NEW DELHI ..... Respondent
Through:Mr.R.D.Jolly, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

Present appeal has been filed under Section 260A of the Income Tax Act, 1961 (in short 'Act') against the order

dated 23rd December, 2005 passed by the Income Tax Appellate Tribunal (in short 'Tribunal').

2. Brief facts are that a search under Section 132(1) of the Act was conducted on 7th August, 1997 at the business premises of the Assessee firm and also the residential premises of its partners. The Assessee firm is engaged in the business of sale and purchase of timber/plywood. Consequent to the search, a notice under Section 158BC of the Act dated 28th April, 1992 was issued by the Assessing Officer requiring the Assessee to file its return of income for the block period 1st April, 1987 to 7th August, 1997. In response thereto, the Assessee filed its return showing undisclosed income of Rs. 4,74,119/-. During the course of assessment proceedings, it was noticed that for the above mentioned period the Assessee had shown purchases of Rs.11,77,666/- and sale of Rs.20,45,039/-. The value of closing stock as on 7th August, 1997 was shown at Rs.4,10,600/-. The Assessing Officer, however, noted that on the date of search, the search party had prepared an inventory of stock, which was valued at Rs.7,41,797/-. The Assessee was asked to explain the difference in the closing

stock to which he replied that the valuation carried out by the search party has not been made correctly since, the search party did not measure the stock physically with regard to each and every item of stock lying at the business premises of the Assessee. Instead, a rough method of valuing the closing stock stacked in blocks was adopted. After the conclusion of the search on 7th August, 1997, the Assessee had physically measured and inventorised each and every item of stock, which worked out to Rs.4,10,576/- and the said amount was considered for the purpose of the filing of the return. The Assessee also submitted that there were certain calculation errors made while making calculation in the inventory sheets complied by the search party.

3. The Assessing Officer rejected the plea of the Assessee that the inventory prepared by the search party was not correct, since the inventory was prepared by the Departmental Officer with the aid and assistance of the Assessee's partner Sh.Samir Chawla and its perusal reveals that it contains description of each and every piece of wood available at the premises of the Assessee. The Assessing

Officer further observed that the Assessee has not been maintaining any stock register for any of the financial years comprised with the block period and the closing stock was being worked out by the Assessee only as a balancing figure. However, Assessing Officer found force in the plea of the Assessee that certain errors had crept in the inventory prepared by the search party.

4. The Assessee being aggrieved with the order of Assessing Officer filed an appeal before Commissioner Income Tax (A) who decided the matter in favour of the Assessee. Thereafter, Revenue filed an appeal before the Tribunal and the Tribunal set aside the order of the Assessing Officer and restored the addition of Rs.3,11,267/- made by the Assessing Officer. On the second ground the appeal filed by the Revenue was dismissed.

5. The present appeal has been filed challenging the decision of the Tribunal restoring the addition of Rs.3,11,267/- made by the Assessing Officer.

6. It has been contended by the learned counsel for the Appellant that the Tribunal did not appreciate that the timber is measured in terms of length x breadth x width.

From Annexure P-1, it is evident that the breadth and width was taken as “4 to 5 ft”, whereas, in reality, breadth and width of any log/piece of timber can never be more than “12 to 15 inches”. Further the Tribunal failed to appreciate that the Appellant on the basis of parallel books of account had filed trading and profit & loss accounts, wherein each and every purchase and sale was duly recorded.

7. The dispute in question pertains to adoption of closing stock as on 7th August, 1997. Since the search was conducted on this date, therefore, the block period for the purpose of assessment ends on 7th August, 1997. During the course of search, inventory was prepared and according to it the stock was computed at Rs.7,41,797/-. The Assessee was not found to be maintaining any stock register and this fact has been admitted by Sh.Samir Chawla, partner of the Assessee firm whose statement was recorded on the date of search. Sh.Samir Chawla in his statement states that he has no idea as to how much stock in quantity and in value is lying in the premises. Further, in reply to question “How do you value the stock?”, he stated, “I do not have any idea.” So the Assessee was not

maintaining any stock register at the time of the search and this aspect has been dealt with the Assessing Officer in his order. The relevant portion of the order of the Assessing Officer read as under:-

> " It is an admitted position that the Assessee has not been maintaining any stock register and that for any of the financial years and that the closing stock has been worked out only as a balancing figure by the Assessee in this very reply dated 23rd August, 1999."

8. It was only in the return of income filed in response to notice under Section 158BC on 12th July, 1999, the Assessee adopted the stock as on 7th August, 1997 at Rs.4,10,600/-. The inventory in this case was prepared on 7th August, 1997 whereas, Assessee waited to file its return of income on 12th July, 1999, wherein the stock was differently depicted. There is nothing on record to show as to what prevented the Assessee from immediately filing the stock position after the search, if the inventory prepared on 7th August, 1997 was wrong. Therefore, this plea of the Assessee that the stock and inventory prepared by the search party was wrong taken after more than two years, cannot be accepted and as such we have no reason

to disagree with the findings given by the Tribunal.

9. With the regard to the submissions made by the learned counsel for the Assessee that valuation done by the Department was not made correctly as actual physical measurements were not done at the time of the search, it may be pointed out that the inventory was prepared at the time of the search by the officials with the aid and assistance of Asseessee's partner Sh.Samir Chawla and in the inventory, description of each and every piece of teak and other pieces have been recorded in "feet and inches" and thereafter the quantity was written in "Cft" as and where applicable and after multiplying with the rate, correct valuation was arrived at. As already held above, the Assessee has not been maintaining any register and the closing stock has been worked out by the Assessee only as a balancing figure, so under these circumstances the inventory prepared by Assessee after the date of search has no meaning.

10. Accordingly, we hold that there is no infirmity in the order passed by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a

substantial question of law, to fall within the limited purview of Section 260-A of the Income Tax Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

11. Accordingly, the present appeal is, hereby, dismissed.

(V. B. GUPTA)
JUDGE

February 14, 2007
sb

(MADAN B. LOKUR)
JUDGE